

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

DAVID S. ROSENZWEIG
E-mail: drosen@kwplaw.com

November 7, 2003

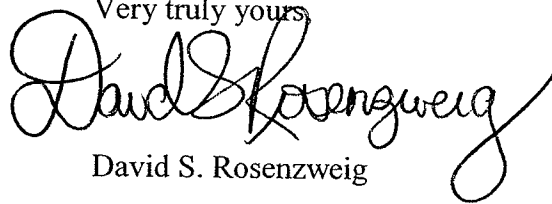
Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Commonwealth Electric Company, D.T.E. 03-69

Dear Secretary Cottrell:

Enclosed please find the Initial Brief of Commonwealth Electric Company d/b/a NSTAR Electric in the above-referenced proceeding. Thank you for your attention to this matter. Please contact me at your convenience if you have any questions regarding this filing.

Very truly yours,

A handwritten signature in black ink, reading "David S. Rosenzweig". The signature is fluid and cursive, with the first name "David" being particularly prominent.

David S. Rosenzweig

Enclosures

cc: Kevin Penders, Hearing Officer
Colleen McConnell, Assistant Attorney General
Neven Rabadjija, Esq.
Stephen J. Carroll
Jeffrey Alves
Tam Ly

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Commonwealth Electric Company)
d/b/a NSTAR Electric)

D.T.E. 03-69

INITIAL BRIEF OF COMMONWEALTH ELECTRIC COMPANY

d/b/a NSTAR ELECTRIC

Submitted by:

David S. Rosenzweig, Esq.
John K. Habib, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110

Date: November 7, 2003

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 03-69

I. INTRODUCTION

On July 9, 2003, Commonwealth Electric Company, d/b/a NSTAR Electric (“NSTAR Electric” or the “Company”), petitioned the Department of Telecommunications and Energy (the “Department”), pursuant to G.L. c. 164, §§ 1A, 1G, 76, and 94, to review and approve the divestiture of the Company’s interest in the land, buildings and intangible personal property located at 2421 Cranberry Highway, Wareham, Massachusetts (the “Wareham Property”) to W/S Development Associates LLC (“W/S Development”). The Wareham Property is the site of the Company’s former operations center.

The Company's initial filing included a Petition (the "Petition") and the following exhibits: (1) the pre-filed testimony of Stephen J. Carroll (Exh. COM-SJC-1); (2) marketing material (Exh. COM-SJC-2); (3) the Purchase and Sale Agreement ("PSA") signed by the Company and W/S Development (Exh. COM-SJC-3); and (4) a Preliminary Calculation of Net Proceeds (Exh. COM-SJC-4). On September 22, 2003, the Company supplemented its initial filing with an exhibit associated with the PSA (i.e., the permitting timeline) (Exh. COM-SJC-3 (Supp.)).

On August 26, 2003, the Office of the Attorney General (the "Attorney General") filed a notice of intervention in this proceeding. On September 3, 2003, a public hearing was held, followed by a procedural conference. The Department held an evidentiary hearing in this proceeding on October 22, 2003. The record in the case includes: (1) 13 exhibits; (2) seven responses to record requests asked of the Company; and (3) the testimony presented at the evidentiary hearing.

In support of the Petition, the Company presented the testimony of Stephen J. Carroll, Real Estate Manager for NSTAR Electric & Gas Corporation ("NSTAR"). Mr. Carroll testified regarding: (1) the open and competitive divestiture process used by the Company; (2) how the Company's divestiture process maximized benefits to customers; and (3) the provisions of the PSA. Mr. Carroll's testimony also addressed the proposed ratemaking treatment and the positive effect of the sale of the Wareham Property on the Company's Transition Charge. As set forth infra, the price offered for the Wareham Property by W/S Development was established after a multi-year, open and competitive marketing process. As a result, upon closing, the divestiture will result in the maximum mitigation of transition costs and approximately \$1.2 million in net savings for the Company's customers.

Accordingly, the Company has demonstrated that it has met the standards established in the Electric Restructuring Act of 1997 (the "Act"), regarding the divestiture of distribution assets (as codified at G.L. c. 164, § 1A(b)(1)), and that the divestiture is consistent with: (1) the Company's restructuring plan (the "Restructuring Plan"), as approved by the Department in Cambridge Electric Light Company, et al.,

D.P.U./D.T.E. 97-111 (1998); and (2) Department precedent. Therefore, the Company respectfully requests that the Department approve its Petition.

II. STANDARD OF REVIEW

The Act requires that the Company undertake all reasonable steps to mitigate its transition costs and encourages companies to divest their non-nuclear generating assets. See G.L. c. 164, § 1G(d)(1). With respect to the divestiture of distribution assets, the Act requires “newly created distribution companies” to seek Department approval prior to the sale of such assets. G.L. c. 164, § 1A(b)(1). The Act requires such “newly created distribution companies” seeking to divest distribution assets to demonstrate that the sale will mitigate to the maximum extent possible the total amount of the Company’s transition costs and will minimize the impact of recovery of transition costs on the Company’s customers. Id.

The Department has previously approved the Company’s Restructuring Plan, finding, among other things, that the Company is committed to the maximum mitigation of its transition costs. Canal Electric Company, Cambridge Electric Light Company, Commonwealth Electric Company, D.P.U./D.T.E. 97-111, at 64 (1998). The Company committed in its Restructuring Plan to reduce transition costs through several means, including: (1) by divesting its generation assets; (2) by divesting and/or renegotiating its Purchased Power Agreements; and (3) by divesting distribution assets that could be disposed of without affecting service quality or reliability (see Restructuring Plan at Volume I, Appendix D, Section III(C)(4)).¹ Although there is ambiguity in the Act with

¹ The Company requests that the Department incorporate by reference the cited portion of the Restructuring Plan, pursuant to 220 C.M.R. § 1.10(3).

respect to the need for prior Department approval of the sale of distribution assets,² the Company's Department-approved Restructuring Plan contemplates approval by the Department of such assets. Accordingly, the Company seeks Department pre-approval of the divestiture of the Wareham Property.

The Company's efforts to market the Wareham Property have resulted in a price that comfortably exceeds the property's book value and will provide savings for customers that would not otherwise be available absent its sale. Accordingly, the Company has met the Act's requirement for divestiture in that a price was achieved that maximizes the Wareham Property's value.

III. THE DIVESTITURE OF THE WAREHAM PROPERTY IS CONSISTENT WITH THE ACT AND THE COMPANY'S APPROVED RESTRUCTURING PLAN

A. The Company's Open and Competitive Sales Process Maximized the Value of the Wareham Property and Maximized Mitigation of the Company's Transition Costs.

The Company's open and competitive process to market the Wareham Property maximized the value of the property and will thereby maximize the mitigation of transition costs, consistent with the Restructuring Act and the Company's approved Restructuring Plan. As described by Mr. Carroll, the Company and its real estate broker,

² In its filing, the Company identified the issue of the ambiguous nature of the provisions of G.L. c. 164, § 1A(b)(1) regarding the sale of distribution assets (Petition at 3, n.1). Because there is uncertainty as to the Department's need to pre-approve the divestiture of such distribution assets pursuant to G.L. c. 164, § 1A(b), and the potential adverse effect that a pre-approval process could have on future sales of the Company's distribution assets, the Company repeats its request that, in the future, the Department clarify its jurisdiction under G.L. c. 164, § 1A(b)(1) regarding the pre-approval for the sale, transfer or conveyance of distribution assets. Because of the need for a Department order in this proceeding by mid-January 2004, the Company understands that the Department may address the Company's request regarding this matter in a future proceeding, rather than in an order regarding this transaction. The Company looks forward to participating in any future generic proceeding addressing this issue.

Meredith & Grew Incorporated ("Meredith & Grew") actively marketed the Property locally, nationally and internationally, over a two-year period through a variety of means (Exh. COM-SJC-1, at 5-6; see also Tr. 1, at 13-18). Meredith & Grew used its expertise to market the Wareham Property to hundreds of potential buyers through such varied means as mass electronic mailings, flyers, newspaper advertisements, direct calls, and the use of a multiple listing service geared toward marketing real estate similar to the Wareham Property (Exh. COM-SJC-1, at 6). In addition, Meredith & Grew marketed the Wareham Property via its own Internet site, which is accessible via the World Wide Web (id.).

Mr. Carroll testified that Meredith & Grew's marketing efforts included solicitations typical to those performed throughout Massachusetts by marketers of large real estate sites, including solicitations to the largest local, national and international companies, as well as to the Town of Wareham (Exh. COM-SJC-1, at 7). He noted that, in particular, Meredith & Grew's expertise in selling similar parcels of land and locating interested purchasers was an integral part of the sales process (id.). Mr. Carroll also testified that Meredith & Grew's substantial experience as a real estate broker and multitude of approaches to marketing the Wareham Property, including personal and professional contacts, Internet listings, and its extensive real estate network, ensured that it was able to identify the full spectrum of interested parties who would place the highest value on the Wareham Property (id.).

The Company's marketing efforts through Meredith & Grew resulted in expressions of interest for the Wareham Property in various forms from several potential purchasers between 2001 and May 2003, including the Town of Wareham (Exh. COM-

SJC-1, at 6; Tr. 1, at 13-18). The Company's agreement with W/S Development represents the best binding agreement to purchase the Wareham Property that the Company was able to negotiate over that period (Tr. 1, at 13-18). W/S Development offered the Company \$7.5 million for the Wareham Property (Exh. COM-SJC-1, at 3; Exh. COM-SJC-3, at I-3; Exh. COM-DTE-1-1), a price which, on a per-acre basis, exceeds the prices paid for other comparable properties in southeast Massachusetts since 1999 (Exh. COM-DTE-1-1(b)(Att.); Tr. 1, at 48-50; Attachment RR-DTE-4). The Company also presented evidence demonstrating that the high price received for the Wareham property was achieved in spite of the fact that the economy in Southeastern Massachusetts has generally been sluggish, especially for the best uses for the Wareham Property, i.e., office or retail space (Exh. SJC-1, at 7; Exh. COM-DTE-1-4 (Att.)).

Based on the record evidence in this proceeding, the Company has demonstrated that the price offered by W/S Development for the Wareham Property reflects its maximum value. The Company has also demonstrated that it achieved this value through an open and competitive sales process, resulting in various parties expressing interest in the Wareham Property during its multi-year marketing time frame. Accordingly, the Department should approve the divestiture of the Wareham Property as consistent with the Act, Department precedent and the Company's approved Restructuring Plan.

B. The Company's Proposal To Flow Back Proceeds from the Sale of the Wareham Property to Customers Via the Variable Component of the Company's Transition Charge Is Consistent with Department Precedent.

The Company proposes to flow back the net proceeds of the Wareham Property sale to customers via the variable component of the Company's transition charge (Exh. COM-SJC-1, at 11; Exh. COM-DTE-1-2). The Company's proposal is consistent with

recent Department precedent in Cambridge Electric Light Company, D.T.E. 02-76 (2002) regarding the sale of Blackstone Station (“Blackstone”) and, thus, should be approved.

In D.T.E. 02-76, the Department directed Cambridge Electric Light Company (“Cambridge”) to return the proceeds from the sale of Blackstone to customers through the fixed component of the company’s transition charge, but only to the extent that Blackstone-related costs had previously been included in the fixed component. Cambridge Electric Light Company, D.T.E. 02-76, at 10. The Department directed that any proceeds from the Blackstone sale that exceeded the costs that had been historically recovered through the fixed component should be returned to customers via the variable portion of Cambridge’s transition charge. Id. In the case of the Wareham Property, the costs of the Wareham Property have not previously been recovered through the fixed component of the Company’s transition charge, because the property is not generation-related (Exh. COM-DTE-1-2). Accordingly, the Company proposes to apply the net proceeds from the sale of the Wareham Property to the variable portion of the Company’s transition charge.

This approach is also consistent with the Department’s precedent in Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-90 (2001). In that proceeding, the Company applied the entirety of the proceeds of utility land sold during 1998 as an adjustment to its transition charge for that year (Exh. COM-DTE-1-2). See Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-90 (October 26, 1999 Initial Filing, Volume 1, Testimony of Robert H. Martin,

Commonwealth Schedule 2, Page 3).³ By flowing back the proceeds of the sale in one year, rather than over several years, the Company treated the proceeds consistently with costs that flow back to customers through the variable component of the Company's transition charge (id.).

As noted during the proceeding, applying the proceeds from the sale of the Wareham Property to the variable portion of the Company's transition charge is in the best interest of customers. First, it returns the net proceeds to customers more quickly than if the proceeds were applied against the fixed component of the transition charge, (i.e., in one year, rather than over several years) (Exh. COM-DTE-1-2). Second, by lowering the transition charge, the proposed approach creates headroom, thereby reducing potential deferrals (e.g., transition costs, standard offer service or default service) that might otherwise occur (id.). Accordingly, consistent with the Department's decisions in D.T.E. 02-76 and D.T.E. 99-90, the Company's proposal is in the best interests of customers, and should be approved.

IV. CONCLUSION

Based on the evidence presented during this case, and for all of the reasons set forth above, the Company requests that the Department find:

- A. That the divestiture process used by the Company to sell the Wareham Property was open and competitive as required by G.L. c. 164, § 1A(b)(2);
- B. That the divestiture process used by the Company resulted in a price for the Wareham Property that maximized the value of the assets for customers, and will mitigate to the maximum extent possible the total

³ The Company requests that the Department incorporate by reference the cited portion of the Initial Filing in D.T.E. 99-90, pursuant to 220 C.M.R. § 1.10(3).

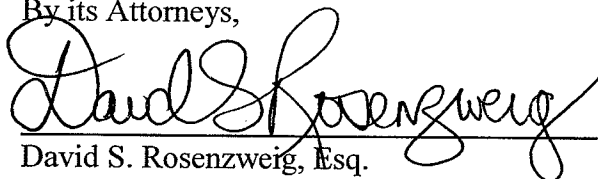
amount of transition costs on customers, as required by G.L. c. 164, § 1A(b)(1) and G.L. c. 164, § 1G;

- C. That the proposed ratemaking treatment is consistent with and in substantial compliance with G.L. c. 164, § 1A(b)(3), and with Department precedent, and is approved;
- D. That the Company will submit in its next transition cost reconciliation filing, following approval of the Petition by the Department and subsequent transfer of title of the Wareham Property to W/S Development, a final accounting of the transaction reflecting a reconciliation of the application of the actual net proceeds of the sale to customers; and
- E. That the Department grant any other approvals and make any requisite findings as may be necessary or appropriate in relation to the Company's Petition.

Respectfully submitted,

COMMONWEALTH ELECTRIC COMPANY
d/b/a NSTAR ELECTRIC

By its Attorneys,

A handwritten signature in black ink, appearing to read "David S. Rosenzweig", is written over a horizontal line.

David S. Rosenzweig, Esq.

John K. Habib, Esq.

Keegan, Werlin & Pabian, LLP

265 Franklin Street

Boston, Massachusetts 02110

(617) 951-1400 (telephone)

(617) 951-1354 (facsimile)

Date: November 7, 2003